the crew were rented to and under the control of another company. In this case the crew was not only selected, but paid by the railway company. *Sexton* v. *N. Y. C. & H. R. R. Co.*, 114 App. Div. 678 and *McInerney* v. *Canal Co.*, 151 N. Y. 411 on practically the same facts as the principal case were decided differently. In 37 L. R. A. 33 is an instructive note on the test of the relation of master and servant. It would seem that to decide these cases on any such broad ground as that of the principal case, viz., of a joint enterprise, is not in accord with the weight of authority. He being master, who has the control, the decision of the principal case might be followed by some courts on the narrower ground that the railway company had control of the giving of the signals. But in answer to this latter point, it is submitted that the brewing company had the power of control, for had the ringing of the bell, in its yard, for any reason, been obnoxious to it, it would have had the power to stop it.

MERGER—COVENANTS OF GRANTEE IN DEED POLL MERGE IN A BOND.—A father deeded lands to his sons, charging it in favor of each of his daughters, with the provision that if any daughter should die without issue, the installments not then due should be discharged. The sons did not sign the deed. Desiring to free the land from the charge they gave each sister a bond for the amount due and to become due under the deed, and the sisters released their lien. One sister died before all the installments of the charge had become due, and before the bond had been paid. Her administrator sued on the bond and the defendants claimed that there was a failure of consideration as to so much of the bond as represented the installments not due at the time of her death. *Held*, that as the deed was not signed by the sons their obligation to pay the charge was a simple contract, and was merged in the bond upon which they are liable. *Barnes* v. *Crockett's Adm'r.* (1910), — Va. —, 68 S. E. 983.

This case presents the application of an old and disputed rule to a new and peculiar set of facts. Had the court in the principal case adopted the view that a grantee who has not signed the deed is nevertheless liable as upon a covenant there would have been no merger, and the defense offered would have been proper. There is no question but that the grantees are liable upon conveyances which they have not signed, but under which they have entered. *Maule* v. *Weaver*, 7 Pa. St. 329; but the courts are divided upon whether the grantee is liable in covenant or in assumpsit. The better authority, however, is that they are liable in simple contract. *Locke* v. *Homer*, 131 Mass. 93; 41 Am. Rep. 199; *Willard* v. *Wood*, 135 U. S. 309; *Johnsons* v. *Muzzy*, 45 Vt. 419, 12 Am. Rep. 214; *Maule* v. *Weaver*, 7 Pa. St. 329; PLATT, Cov. 18. Contra: *Finley* v. *Simpson*, 22 N. J. L. 311, 53 Am. Dec. 252; *Earle* v. *Mayor*, 38 N. J. L. 47; *Ga. So. Ry. Co.* v. *Reeves*, 64 Ga. 492; *Bowen* v. *Beck*, 94 N. Y. 86, 46 Am. Rep. 124. This question becomes important often times in determining when the statute of limitations has run. In *Midland Ry. Co.* v. *Fisher*, 125 Ind. 19, 21 Am. St. Rep. 189, 8 L. R. A. 604; *Hickey* v. *Railway Co.*, 51 Ohio St. 40, 36 N. E. 672, 23 L. R. A. 396; *Sexauer* v. *Wilson*, 136 Iowa 357, 14 L. R. A. (N. S.) 185, and *Poage* v. *Rail-*

road Co., 24 Mo. App. 199, it was held that the statute in regard to covenants is binding, while *Foster* v. *Atwater*, 42 Conn. 244; *Fowler* v. *Smith*, 2 Cal. 39, and *Trustees* v. *Spencer*, 7 Ohio 149, hold that the statute as regards simple contracts was controlling. The question cannot arise in those states where all distinction between sealed and unsealed instruments has been abolished by statute, except in case of corporate seals. *Dyer* v. *Gill*, 32 Ark. 410; *Ortman* v. *Dixon*, 13 Cal. 34; *Edwards* v. *Dillon*, 147 Ill. 14, 35 N. E. 135. Further see 6 MICH. L. REV. 418.

MUNICIPAL CORPORATIONS—DEFECT IN STREET—INJURIES—QUESTION FOR JURY.—Plaintiff alleged injuries sustained by reason of being thrown from his bicycle while riding on a street of the defendant city, which street he alleged was in an unsafe condition for travel because of an excavation which was negligently permitted to be and remain therein. The following instruction was given. "You are instructed that a person riding a bicycle upon a street of Salt Lake City, being at a greater disadvantage with respect to obstructions,, than a traveller by team or machine, should use a degree of care equal to the risk, to-wit, ordinary care as defined in these instructions, and as a matter of ordinary care and prudence should observe the path or way being travelled, with a view to detect and avoid, if possible, any obstructions that would make it unsafe for a bicycle rider." *Held*, prejudicial to plaintiff's rights and erroneous. *Bills* v. *Salt Lake City* (1910), — Utah —, 109 Pac. 745.

The law in this country in regard to the care necessary to be exercised by a traveller on a public street is set forth in the case of *Pettengill* v. *City of Yonkers*, 116 N. Y. 558, 22 N. E. 1096, where it is stated: A person using a public street has no reason to apprehend danger, and is not required to be vigilant to discover dangerous obstructions, but he may walk or drive in the daytime or night time, relying upon the assumption that the corporation whose duty it is to keep the streets in a safe condition for travel has performed that duty, and that he is exposed to no danger from its neglect. As authority for this rule see also *Osborne* v. *City of Detriot*, (C. C.) 32 Fed. 36; *City of Chicago* v. *McLean*, 133 Ill. 148, 24 N. E. 527, 8 L. R. A. 765; *Anderson* v. *City of Wilmington*, 2 Pennewill 28, 43 Atl. 841; *City of Nokomis* v. *Salter*, 61 Ill. App. 150; *Sherman* v. *Village of Oneonta*, 66 Hun 629, 21 N. Y. Supp. 137. It is possible that the District Court Judge in giving the instruction here criticized may have been influenced by the general tenor of those cases holding that a municipality is not liable for damages arising from injuries to bicycle riders or to persons driving automobiles where the injuries resulted from defects in the highway not ordinarily dangerous to persons travelling by foot or by team, carriage or vehicle ejusdem generis. *Richardson* v. *Inhabitants of Danvers*, 176 Mass. 413, 57 N. E. Rep. 688, 50 L. R. A. 127, 79 Am. St. Rep. 320; *Baker* v. *Fall River*, 187 Mass. 53, 72 N. E. 336. See also 6 MICH. L. REV. 568, for a collection of cases and discussion of this subject. While the law at the present time in regard to damages suffered through accidents to bicyclists and those driving automobiles occasioned by reason of imperfections in highways and streets, is un-